

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS ROGER WHITE, JR. and
PATRICIA CAULEY on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS
AMERICA, INC. and SONY
ELECTRONICS INC.,

Defendants.

Civil Action No. 17-1775
(MCA) (JAD)

Hon. Madeline Cox Arleo, U.S.D.J.
Hon. Joseph A. Dickson, U.S.M.J.

**DECLARATION OF SIMON J. FRANKEL IN SUPPORT OF SAMSUNG
ELECTRONICS AMERICA, INC.’S MOTION TO COMPEL INDIVIDUAL
ARBITRATION AND STRIKE PLAINTIFFS’ CLASS CLAIMS**

I, Simon J. Frankel, hereby declare:

1. I am a partner in the law firm of Covington & Burling LLP, counsel for Samsung Electronics America, Inc. (“SEA”) in this action. I am admitted to practice *pro hac vice* before this Court. Unless otherwise stated, the facts set forth below are based on my own personal knowledge, and if called upon to testify, I could and would testify competently thereto.

2. On April 14, 2020, I sent an email to Plaintiffs’ counsel requesting that Plaintiffs provide the serial number for Plaintiff Cauley’s Samsung SmartTV and complete and accurate serial number information for Plaintiff White’s Samsung SmartTVs. (As I explained in my April 14 email, the serial number

Plaintiffs had provided in their April 11, 2018 initial disclosures for Plaintiff White's UN32J5500AF SmartTV was incomplete or erroneous.) A true and correct copy of my April 14 email to Plaintiffs' counsel is attached hereto as Exhibit 1.

3. On April 27, 2020, Plaintiffs' counsel sent me, for the first time, the serial number for Plaintiff Cauley's Samsung SmartTV and complete serial number information for Plaintiff White's Samsung SmartTVs. True and correct copies of the April 27 emails containing the serial number information for Plaintiffs' SmartTVs are attached hereto as Exhibits 2 and 3.

4. On May 5, 2020, I spoke to Plaintiffs' counsel by telephone. On the call, I informed Plaintiffs' counsel that based on the serial and model numbers he provided, SEA determined that Plaintiffs had each agreed to arbitration, and that SEA intended to file a motion to compel arbitration. (I noted to Plaintiffs' counsel that SEA did not have sufficient information about Plaintiff White's second TV to pinpoint the date when he consented to arbitration.)

5. On May 11, 2020, I sent a letter to Plaintiffs' counsel demanding that Plaintiffs submit their claim to arbitration pursuant to the arbitration provision in the Samsung SmartTV Terms and Conditions and reiterating SEA's intent to move to compel arbitration. A true and correct copy of my May 11 letter is attached hereto as Exhibit 4.

6. Late on the evening of May 11, 2020 (pacific time), I sent Plaintiffs' counsel an email requesting that Plaintiff White provide the Unique Device ID ("UDID") for his model UN32J5500AF Samsung SmartTV. I included with my email a set of step-by-step instructions to retrieve the UDID from Plaintiff White's SmartTV. A true and correct copy of my May 11 email is attached hereto as Exhibit 5.

7. As of the date of this declaration, Plaintiffs have not responded to either my May 11 letter demanding arbitration or my May 11 request for Plaintiff White's UDID.

8. To date, the parties had not served any discovery requests (expect for a single interrogatory served by Plaintiffs related to this motion), produced any documents, or taken any depositions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2020 in San Francisco, California



Simon J. Frankel